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Foods, Inc.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SCOTT KOLLER, an individual, on behalf of  
himself, the general public and those similarly  
situated,

Plaintiff,

v.

DEOLEO USA, INC.; and MED FOODS, INC.,

Defendants.

Case No. 3:14-cv-02400-RS

~~PROPOSED~~ STIPULATED PROTECTIVE  
ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, Plaintiff Scott Koller (“Plaintiff”) and Defendant Deoleo USA, Inc. (f/k/a Med Foods, Inc.) (“Defendant”) and any future defendants in the above-titled action who agree in writing to be bound by this Stipulated Protective Order (the “Parties,” which term shall include their counsel), hereby stipulate to and petition the court to enter the following Stipulated Protective Order (“Order”). The Parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The Parties further acknowledge, as set forth in Section 14.4, below, that the Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts,

and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party's competitor.

2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items: extremely sensitive "Confidential Information or Items," disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.8 House Counsel: attorneys who are employees of a party to this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.9 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.10 Outside Counsel of Record: attorneys who are not employees of a Party but are retained to represent or advise a Party and have appeared in this action on behalf of that Party or are affiliated with a law firm which has appeared on behalf of that Party.

2.11 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.14 Protected Material: any Disclosure or Discovery Material that is designated as "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

### 3. SCOPE

The protections conferred by this Order cover not only Protected Material (as defined above), but

1 also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or  
2 compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their  
3 Counsel that might reveal Protected Material. However, the protections conferred by this Order do not cover  
4 the following information: (a) any information that is in the public domain at the time of disclosure to a  
5 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of  
6 publication not involving a violation of this Order, including becoming part of the public record through  
7 trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained  
8 by the Receiving Party after the disclosure from a source who obtained the information lawfully and under  
9 no obligation of confidentiality to the Designating Party. Notwithstanding any other provision of this Order,  
10 if the need arises during trial or at any hearing before the Court for any Party to disclose Protected Material,  
11 the Parties shall confer and attempt to agree before any court trial or hearing regarding the procedures for  
12 which Protected Material may be used or introduced into evidence at such trial or hearing. Upon reaching  
13 agreement, the Parties shall give notice of the terms of such agreement to each third party producing  
14 Protected Material which may be used or introduced at such trial or hearing. Because it would affect the  
15 public availability of material used at a trial or hearing, any such agreement will be effective only upon  
16 Court approval. Absent agreement of the Parties, any Party upon reasonable notice to the Designating Party  
17 may move the Court to issue an order governing the use of Protected Information at a trial or hearing.

18 4. DURATION

19 Even after final disposition of this litigation, the confidentiality obligations imposed by this Order  
20 shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise  
21 directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this  
22 action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all  
23 appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions  
24 or applications for extension of time pursuant to applicable law.

25 5. DESIGNATING PROTECTED MATERIAL

26 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-  
27 Party that designates information or items for protection under this Order must take care to limit any such  
28 designation to specific material that qualifies under the appropriate standards. To the extent it is practical to

1 do so, the Designating Party must designate for protection only those parts of material, documents, items, or  
2 oral or written communications that qualify – so that other portions of the material, documents, items, or  
3 communications for which protection is not warranted are not swept unjustifiably within the ambit of this  
4 Order.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be  
6 clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or  
7 retard the case development process or to impose unnecessary expenses and burdens on other Parties)  
8 expose the Designating Party to sanctions.

9 If it comes to a Designating Party's attention that information or items that it designated for  
10 protection do not qualify for protection at all or do not qualify for the level of protection initially asserted,  
11 that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g.,  
13 second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery  
14 Material that qualifies for protection under this Order must be clearly so designated before the material is  
15 disclosed or produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (e.g., paper or electronic documents, but excluding  
18 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend  
19 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each page that  
20 contains protected material. If only a portion or portions of the material on a page qualifies for protection,  
21 the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings  
22 in the margins) and must specify, for each portion, the level of protection being asserted.

23 A Party or Non-Party that makes original documents or materials available for inspection need not  
24 designate them for protection until after the inspecting Party has indicated which material it would like  
25 copied and produced. During the inspection and before the designation, all of the material made available  
26 for inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the  
27 inspecting Party has identified the documents it wants copied and produced, the Producing Party must  
28 determine which documents, or portions thereof, qualify for protection under this Order. Then, before

1 producing the specified documents, the Producing Party must affix the appropriate legend  
2 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that  
3 contains Protected Material. If only a portion or portions of the material on a page qualifies for protection,  
4 the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings  
5 in the margins) and must specify, for each portion, the level of protection being asserted.

6 (b) for testimony given in deposition or in other pretrial or trial proceedings, within thirty  
7 (30) days of receipt of the certified deposition transcript, any Party may mark as “CONFIDENTIAL” or  
8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” any portion of the deposition transcript  
9 containing such information. The Party seeking to so mark the deposition transcript after the certified  
10 transcript has been prepared shall promptly notify all persons who were present at the deposition of its intent  
11 to do so, shall instruct the court report to conform the deposition transcript, and shall bear all reasonable  
12 costs related thereto. Transcripts containing Protected Material shall have an obvious legend on the title  
13 page that the transcript contains Protected Material, and the title page shall be followed by a list of all pages  
14 (including line numbers as appropriate) that have been designated as Protected Material and the level of  
15 protection being asserted by the Designating Party. The Designating Party shall inform the court reporter of  
16 these requirements. Any transcript that is prepared before the expiration of the 30-day period for designation  
17 shall be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL –  
18 ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period,  
19 the transcript shall be treated only as actually designated.

20 A Designating Party may de-designate any portion of the deposition transcript that the Party  
21 previously had designated as Protected Material, by promptly notifying in writing all other Parties and all  
22 persons who were present at the deposition of its intent to de-designate. The notice shall identify with  
23 specificity the portion of portions of the transcript that no longer are designated as Protected Material. The  
24 Designating Party shall instruct the court reporter to produce a new certified copy of the deposition  
25 transcript that removes any confidentiality designations as appropriate, and shall bear all reasonable costs  
26 related thereto.

27 Parties shall give the other Parties notice if they reasonably expect a deposition, hearing or other  
28 proceeding to include Protected Material so that the other Parties can ensure that only authorized individuals

1 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those  
2 proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its designation  
3 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

4 (c) for information produced in some form other than documentary and for any other  
5 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or  
6 containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY  
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information or item  
8 warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s) and  
9 specify the level of protection being asserted.

10 5.3 Inadvertent Failures to Designate. If a Designating Party inadvertently produces Protected  
11 Material without designating it as such in accordance with this Order, the Designating Party shall notify all  
12 Receiving Parties of the proper designation of the Protected Material as soon as practical after discovery of  
13 the error by the Designating Party. The Designating Party shall provide the Receiving Parties with a  
14 replacement of the Protected Material marked in accordance with this Order. Upon receipt of the designated  
15 document or information: (a) the document or information shall be treated by the Receiving Parties as if it  
16 had been timely designated as Protected Material under this Order; and (b) the Receiving Parties shall use  
17 reasonable efforts to identify any other persons or entities to whom the information in question was given.  
18 It shall then be the burden of the Receiving Parties to collect in good faith all such Protected Information  
19 from persons and entities who would not have been entitled access thereto if the document or information  
20 had been so designated at the outset. The Receiving Parties shall use reasonable efforts to protect from  
21 disclosure any unmarked copies of the Protected Material in their possession, by destroying or returning to  
22 the Designating Party any unmarked copies of the Protected Information in their possession. The  
23 inadvertent disclosure or inadvertent mis-marking by a Designating Party of documents or information that  
24 the Designating Party believes to be confidential shall not automatically be deemed a waiver in whole or in  
25 part of the Designating Party’s claim of confidentiality, either as to the specific document or information  
26 disclosed or as to any other document or information relating thereto or concerning the same or related  
27 subject matter. However, any Party may claim that the intentional disclosure of Protected Material by the  
28 Designating Party to anyone other than the Designating Party and its counsel, without the confidential

1 designation, be deemed a waiver of any claimed protection.

2 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

3 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
4 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality designation is  
5 necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant  
6 disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality  
7 designation by electing not to mount a challenge promptly after the original designation is disclosed.

8 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by  
9 providing written notice of each designation it is challenging and describing the basis for each challenge. If  
10 the basis of the Challenging Party's challenge is the same for a group of documents, the Challenging Party  
11 may provide written notice of the group of documents challenged and the basis for the challenge to the  
12 designation of the group of documents. To avoid ambiguity as to whether a challenge has been made, the  
13 written notice must recite that the challenge to confidentiality is being made in accordance with this specific  
14 paragraph of the Order. The Parties shall attempt to resolve each challenge in good faith and must begin the  
15 process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)  
16 within 14 days of the date of service of notice. In conferring, the Challenging Party must explain the basis  
17 for its belief that the confidentiality designation was not proper and must give the Designating Party an  
18 opportunity to review the designated material, to reconsider the circumstances, and, if no change in  
19 designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to  
20 the next stage of the challenge process only if it has engaged in this meet and confer process first or  
21 establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely  
22 manner.

23 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention,  
24 the Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 7 (and in  
25 compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial notice of challenge or  
26 within 14 days of the Parties agreeing that the meet and confer process will not resolve their dispute,  
27 whichever is earlier. Each such motion must be accompanied by a competent declaration affirming that the  
28 movant has complied with the meet and confer requirements imposed in the preceding paragraph. Failure by



1 the Designating Party to make such a motion including the required declaration within 21 days (or 14 days,  
2 if applicable) shall automatically waive the confidentiality designation for each challenged designation. In  
3 addition, the Challenging Party may file a motion challenging a confidentiality designation at any time if  
4 there is good cause for doing so, including a challenge to the designation of a deposition transcript or any  
5 portions thereof. Any motion brought pursuant to this provision must be accompanied by a competent  
6 declaration affirming that the movant has complied with the meet and confer requirements imposed by the  
7 preceding paragraph.

8 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.  
9 Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary  
10 expenses and burdens on other Parties) may expose the Challenging Party to sanctions. Unless the  
11 Designating Party has waived the confidentiality designation by failing to file a motion to retain  
12 confidentiality as described above, the Parties shall continue to afford the material in question the level of  
13 protection to which it is entitled under the Producing Party's designation until the court rules on the  
14 challenge.

15 7. ACCESS TO AND USE OF PROTECTED MATERIAL

16 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
17 produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending,  
18 or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of  
19 persons and under the conditions described in this Order. When the litigation has been terminated, a  
20 Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

21 Protected Material must be stored and maintained by a Receiving Party at a location and in a secure  
22 manner that ensures that access is limited to the persons authorized under this Order.

23 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the  
24 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or  
25 item designated "CONFIDENTIAL" only to:

26 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of  
27 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this  
28 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto

1 as Exhibit A;

2 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party  
3 to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment  
4 and Agreement to Be Bound” (Exhibit A);

5 (c) the named Plaintiffs who have signed the “Acknowledgment and Agreement to Be  
6 Bound” (Exhibit A);

7 (d) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
8 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be  
9 Bound” (Exhibit A);

10 (e) the court and its personnel;

11 (f) court reporters and their staff, professional jury or trial consultants, and Professional  
12 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the  
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

14 (g) during their depositions, witnesses in the action to whom disclosure is reasonably  
15 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless  
16 otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition  
17 testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court  
18 reporter and may not be disclosed to anyone except as permitted under this Order; and

19 (h) the author or recipient of a document containing the information or a custodian or other  
20 person who otherwise possessed or knew the information.

21 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information  
22 or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a  
23 Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL –  
24 ATTORNEYS’ EYES ONLY” only to:

25 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of  
26 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this  
27 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto  
28 as Exhibit A;

(b) Experts (as defined in this Order) of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, and (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) the named Plaintiffs who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

#### 8. DISCUSSION WITH CLIENTS

In the event that a Receiving Party’s counsel believes in good faith that it is reasonable to consult with its client (or in the case of a corporate client, an officer or employee thereof), who would not otherwise be permitted access, about a document or information designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that directly identifies such client, officer or employee, counsel may consult with such client, officer or employee about the portion of such document or information that directly identifies such client, officer or employee, so long as: (a) the consultation does not disclose specifically HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY, but only the general subject matter of the document or information, and (b) the document or information itself or any other portion thereof is not given or disclosed to such client, officer or employee, and (c) such client, officer or employee has signed an Acknowledgment and Agreement to Be Bound” (Exhibit A).

#### 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy

1 of the subpoena or court order;

2 (b) promptly notify in writing the party who caused the subpoena or order to issue in the  
3 other litigation that some or all of the material covered by the subpoena or order is subject to this Order.

4 Such notification shall include a copy of this Order; and

5 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
6 Designating Party whose Protected Material may be affected.

7 If the Designating Party timely seeks a protective order, the Party served with the subpoena  
8 or court order shall not produce any information designated in this action as “CONFIDENTIAL” or  
9 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the court from  
10 which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The  
11 Designating Party shall bear the burden and expense of seeking protection in that court of its confidential  
12 material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving  
13 Party in this action to disobey a lawful directive from another court.

14 10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
15 LITIGATION

16 (a) The terms of this Order are applicable to information produced by a Non-Party in  
17 this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
18 ONLY.” Such information produced by Non-Parties in connection with this litigation is protected by the  
19 remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a  
20 Non-Party from seeking additional protections.

21 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-  
22 Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-  
23 Party not to produce the Non-Party’s confidential information, then the Party shall:

24 1. promptly notify in writing the Requesting Party and the Non-Party that some or all  
25 of the information requested is subject to a confidentiality agreement with a Non-Party;

26 2. promptly provide the Non-Party with a copy of the Order in this litigation, the  
27 relevant discovery request(s), and a reasonably specific description of the information requested; and

28 3. make the information requested available for inspection by the Non-Party.

1 If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving  
2 the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential  
3 information responsive to the discovery request. If the Non-Party timely seeks a protective order, the  
4 Receiving Party shall not produce any information in its possession or control that is subject to the  
5 confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to  
6 the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its  
7 Protected Material.

8 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

9 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
10 Material to any person or in any circumstance not authorized under this Order, the Receiving Party must  
11 immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best  
12 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to  
13 whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or  
14 persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

15 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
16 MATERIAL

17 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
18 produced material is subject to a claim of privilege or other protection, the obligations of the Receiving  
19 Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to  
20 modify whatever procedure may be established in an e-discovery order that provides for production without  
21 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the Parties reach an  
22 agreement on the effect of disclosure of a communication or information covered by the attorney-client  
23 privilege or work product protection, the Parties may incorporate their agreement in the stipulated protective  
24 order submitted to the court.

25 13. SANCTIONS  
26  
27  
28

1 Intentional disclosure of Protected Material or other violation of this Order by a Party or other  
2 person authorized to receive Protected Material pursuant to this Order may subject the violating person to  
3 sanctions for contempt of court, as well as any other statutory or common law remedies that may be  
4 available to the Designating Party.

5 14. MISCELLANEOUS

6 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its  
7 modification by the court in the future.

8 14.2 Right to Assert Other Objections. By stipulating to the entry of this Order no Party waives  
9 any right it otherwise would have to object to disclosing or producing any information or item on any  
10 ground not addressed in this Order. Similarly, no Party waives any right to object on any ground to use in  
11 evidence of any of the material covered by this Order.

12 14.3 No Waiver of Right to Appropriately Withhold or Redact. Notwithstanding the provisions  
13 of this Order, Designating Parties may redact from any produced information, whether designated as  
14 Protected Material or not, any information containing privileged material or any irrelevant trade secrets or  
15 other irrelevant highly confidential research, development or commercial information, or any other data  
16 protected from disclosure by State or Federal regulations. If, after reviewing information containing a  
17 redaction, a Receiving Party has a good faith basis for challenging the redaction, the Parties shall initially  
18 attempt to resolve the issue through discussions. If those discussions prove unsuccessful, the challenging  
19 Party may move for a ruling by the Court on whether the information is entitled to redaction, which may,  
20 where legally permitted, necessitate an *in camera* inspection of the document in non-redacted form by the  
21 Court. If the Court orders that the redacted portion of the information should remain redacted, then the  
22 redacted portion of said Discovery Material may not be used as evidence by any Party at trial or at a hearing  
23 and may not be relied upon by any Party's Expert. If the Court orders that the redacted portion of the  
24 information is not entitled to redaction, and if the Court orders the Designating Party to produce the  
25 information without redaction, then the Designating Party shall produce the information in non-redacted  
26 form. Unless expressly ordered otherwise by the Court, a finding that information is not entitled to  
27 redaction shall have no effect on the status of the information as Protected Information.

28 14.4 Filing Protected Material. Without written permission from the Designating Party or a court

1 order secured after appropriate notice to all interested persons, a Party may not file in the public record in  
2 this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply  
3 with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order  
4 authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a  
5 sealing order will issue only upon a request establishing that the Protected Material at issue is privileged,  
6 protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request  
7 to file Protected Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the  
8 Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2)  
9 unless otherwise instructed by the court.

10 15. FINAL DISPOSITION

11 Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
12 Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used  
13 in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any  
14 other format reproducing or capturing any of the Protected Material. Whether the Protected Material is  
15 returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if  
16 not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by  
17 category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that  
18 the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format  
19 reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled  
20 to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal  
21 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and  
22 consultant and expert work product, even if such materials contain Protected Material. Any such archival  
23 copies that contain or constitute Protected Material remain subject to this Order as set forth in Section 4  
24 (DURATION).

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: October 14, 2014

3 /s/ Seth A. Safier /  
4 Seth A. Safier, Esq.  
Attorneys for Plaintiff

5 DATED: October 14, 2014

6 /s/ Stephanie A. Stroup /  
Stephanie A. Stroup  
Attorneys for Defendant

7 PURSUANT TO STIPULATION, IT IS SO ORDERED.

8 DATED: 10/14/14

9 

10 Judge Richard Seeborg  
United States District/Magistrate Judge



## EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
 [print or type full address], declare under penalty of perjury that I have read in its entirety and understand  
 the Stipulated Protective Order that was issued by the United States District Court for the Northern District  
 of California on [date] in the case of *Koller v. Deoleo USA, Inc.*, Case No. 3:14-cv-02400-EDL. I agree to  
 comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and  
 acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of  
 contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject  
 to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of  
 this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order,  
 even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
 \_\_\_\_\_ [print or type full address and telephone number] as my  
 California agent for service of process in connection with this action or any proceedings related to  
 enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
 [printed name]

Signature: \_\_\_\_\_  
 [signature]

**ATTESTATION OF CONCURRENCE IN FILING**

I, Marie A. McCrary, am the ECF User whose identification and password are being used to file this Stipulated Protective Order. In compliance with Local Rule 5-1(i)(3), I hereby attest that Stephanie A. Stroup of Fulbright & Jaworski LLP has concurred in this filing.

DATED: October 14, 2014

/s/ Marie A. McCrary  
GUTRIDE SAFIER LLP  
Attorneys for Plaintiff